

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

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IN THE MATTER OF: . Case No. 12-16514(DHS)  
. Newark, New Jersey  
VICTOR MONDELLI, .  
. March 19, 2012  
Debtor, .  
- - - - - .

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE DONALD H. STECKROTH  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor: JOSEPH M. RASA, ESQ.  
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Pompton Plains, NJ 07444

For the Movant: FISCHER PORTER THOMAS & REINFELD, P.C.  
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Electronic Court Reporter: Edith Valentin

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I N D E X

ORAL ARGUMENT	PAGE
BY MR. PORTER	5 / 24
BY MR. RASA	9 / 24
BY MS. GREENBERG	22
DECISION	27

Colloquy

3

1 THE COURT: Be seated, please. This is the hearing  
2 on an order shortening time in the Mondelli, Victor Mondelli  
3 matter. Can we have appearances, please.

4 MR. PORTER: Good afternoon, Your Honor, Arthur Scott  
5 Porter, Jr., with Aaron Albert, with the firm Fischer Porter  
6 Thomas and Reinfeld, on behalf of the movant.

7 MR. RASA: Good afternoon, Your Honor, Joseph Rasa,  
8 counsel for the debtor, Victor Mondelli.

9 MS. GREENBERG: Good afternoon, Marie-Ann Greenberg,  
10 Chapter 13 standing Trustee.

11 THE COURT: All right, great, thank you. Be seated.  
12 This is, as I indicated, a hearing on short notice in which the  
13 secured party has moved to dismiss the debtor's Chapter 13  
14 petition of last week, or in the alternative for relief from  
15 the automatic stay, with prospective relief. I entered an  
16 order to shortening time for a hearing today.

17 I have reviewed the application. I want the record  
18 to reflect I reviewed the application, the affidavits that have  
19 been filed in support of it, the Chapter 13 Trustee's letter of  
20 March 16th, and the debtor's opposition to the motion. And the  
21 debtor has also requested by a cross motion that the approval  
22 of a sale of the subject property.

23 Mr. Porter, I'll hear you.

24 MR. PORTER: Thank you, Your Honor. Your Honor,  
25 we've just seen you a short time ago and I will try to control

Porter/Argument

4

1 my rage in respect to the application that was made last  
2 Wednesday to stay the Sheriff's sale. As it turns out --

3 THE COURT: Was it last Wednesday that the Sheriff's  
4 sale was scheduled?

5 MR. PORTER: Correct, Your Honor.

6 THE COURT: Okay.

7 MR. PORTER: Scheduled at two o'clock, and it was  
8 that day, there was a little confusion in terms of when in fact  
9 my office was notified of it. But effectively my associate was  
10 down at the Sheriff's Office as we were notified, Judge.

11 As Your Honor well knows, we were here just two weeks  
12 ago with regard to Anna Mondelli's application for our  
13 application to dismiss her bankruptcy proceeding. And it turns  
14 out, Judge, that at that time while we were here, Mr. Mondelli,  
15 Mr. Rosellini, and I'm not sure when Mr. Rasa became involved,  
16 but they were involved in another scheme to try to delay the  
17 foreclosure sale of the property that my clients had started  
18 foreclosure proceedings back in 2008.

19 And here we are again, Judge. This is an outrage,  
20 Judge. This is a toying with the Court. This is a scam. This  
21 is just not tolerable by you, by the District Court, by the  
22 Court of Appeals, by anybody.

23 What's happened here is an outrage, Judge. Under the  
24 law though, and let's stick to the law, because that's what we  
25 need to do, there's no choice but for Your Honor to dismiss

1 this petition.

2 Under the Lilley factors it's clear, absolutely clear  
3 that this petition was brought for one reason, to stop a  
4 foreclosure sale. Mr. Mondelli, now claims he has a buyer.  
5 Where has this buyer been for four years? Where has he been?  
6 In fact, Your Honor, this buyer contacted my office in October.  
7 There is no prejudice whatsoever to this phantom buyer for this  
8 Sheriff's sale to go forward. Nor is there any prejudice to  
9 Mr. Mondelli. The Sheriff's sale is scheduled for now this --  
10 is not scheduled right now, but we are told that if we obtain  
11 relief from Your Honor, that it is very likely we can have a  
12 sale scheduled for this Wednesday. It is also important for  
13 Your Honor to know is that we have the trial in this matter  
14 scheduled for this Wednesday also.

15 So under the Lilley factors it's clear, Judge, that  
16 in fact this petition was filed for no other reason other than  
17 to stop the foreclosure sale. The facts are clear. On  
18 February 29th Mr. Mondelli himself is supposedly meeting with a  
19 credit counselor. That's the day that we were supposed to  
20 have the first sale, that Anna Mondelli caused to be delayed.

21 Mr. Mondelli then worked apparently with Mr.  
22 Rosellini to file this petition. And the petition Your Honor,  
23 doesn't even match the threshold that's required under USC 109.  
24 It's the same position we had two weeks ago, Judge, where Your  
25 Honor correctly ruled that, one, the application, the petition

1 that was brought by Anna Mondelli exceeded the jurisdictional  
2 threshold. And two, that it was brought in bad faith.

3 And of course, Judge, under USC 362D(1) and (2),  
4 there's good cause to dismiss this petition and it involves  
5 property. There's no equity in this property, Judge. And  
6 there's good cause under the bad faith provisions that we've  
7 provided to you.

8 An interesting side issue here, Judge, is whether or  
9 not this bankruptcy case that Mr. Mondelli filed back in 2004  
10 is in fact still pending. It's on appeal to the Court of  
11 Appeals now. Maybe it's still pending. So he would be  
12 precluded under those circumstances also, Your Honor.

13 What we've been provided with, Judge, is a sham  
14 contract. A contract that on its face should be rejected by  
15 Your Honor. And I submit to Your Honor, you should look at it  
16 carefully and see what I think are indicia of nothing other  
17 than an attempt to forestall the inevitable here.

18 The contract itself is not for the two lots. It's  
19 for Lot 23 only not 23 and 24. In addition, Judge, it says  
20 that the sellers have until October 10th 2011 to obtain  
21 financing. In other words, Judge, that contract was created  
22 months ago.

23 And then what they support it of course with is well,  
24 we're going to have a mortgage. And of course we'll pay a  
25 deposit. That hasn't happened, Judge, there's no deposit.

1 There's no certification from these alleged buyers. These  
2 alleged buyers are coming out of the woodwork either to take  
3 the property from Mr. Mondelli, or to just help him as family  
4 members, without respect to the situation or the circumstances  
5 that my clients have been put through since 2007.

6 The supposed appraisal that's attached has a few  
7 caveats, Judge. A few caveats. One we're not sure which  
8 property it applies to. But it says, oh, this is all subject  
9 to an income appraisal. Judge, there is no way that that  
10 appraisal can be viewed by Your Honor of having any legitimacy.  
11 There is no way that you can view this appraisal as meaning  
12 anything other than as part of the plan hatched by Mr.  
13 Rosellini, Mr. Mondelli, and now counsel.

14 And Judge, I submit to you, this is the case, this is  
15 the time for Your Honor to impose sanctions against Mr.  
16 Rosellini, against Mr. Mondelli, against his new counsel Mr.  
17 Rasa. What's clear, Judge, is that Mr. Rasa did not do his  
18 homework, he didn't understand what was happening here. He has  
19 the temerity to submit a Chapter 13 petition where he says, my  
20 client doesn't need counseling for his mental situation. But  
21 at the same time Mr. Rosellini is in Chancery Court before  
22 Judge Malone saying, my client's incompetent. He's a  
23 schizophrenic.

24 This is what we've been having for five years, Judge.  
25 And it's time for Your Honor to put an end to it so my clients

1 can recover their investment that they made. Proceed to the  
2 foreclosure action. Obtain title to the property. Proceed to  
3 the trial so they can recover their damages. And put an end to  
4 this, Judge.

5 I would submit that Your Honor should dismiss the  
6 petition as a bad faith filing. It doesn't satisfy the  
7 jurisdictional amounts. And that you should impose a \$10,000  
8 sanction as against Mr. Rasa, as against Mr. Rosellini, as  
9 against Mr. Mondelli, Judge. And you should also stipulate  
10 that they cannot file a bankruptcy petition for 120 days. And  
11 this should be with prejudice, Your Honor, these orders, such  
12 that these parties if they want to do what they want to do it's  
13 with prejudice, Judge.

14 So I would submit, Your Honor, the Lilley factors  
15 have been established. There's an excess of the threshold  
16 under 363D(1) and (2), we've satisfied the requirements. And  
17 there's an issue as to whether the case is open. And I would  
18 submit as to the sanctions, Judge, that in fact Your Honor has  
19 the inherent authority to issue sanctions under 11 USC 105,  
20 where it's clear that the statute provides you with authority  
21 to impose sanctions where there has been -- to prevent an abuse  
22 of process. And that's what this is, Judge.

23 Think about it, my clients now are losing \$300 a day.  
24 That's what the papers show. That's what the calculations  
25 show, \$300 a day because of the games and the outrageous



Rasa/Argument

9

1 conduct of Mr. Mondelli and his attorneys. And now we have a  
2 new player. A new bankruptcy attorney who now claims, oh no I  
3 can save the day here, Judge. That boat passed years ago.  
4 It's time, Your Honor, and I know this is difficult, it's time  
5 Your Honor for sanctions to be issued. For Mr. Mondelli to pay  
6 the price for coming into this court wasting your time, my  
7 client's time, my client's money, and this whole court, so we  
8 can move forward, and wasting the Sheriff's time also, Judge.  
9 Let's move on with this case, Judge.

10 I have a lot more to say but I think it would be  
11 appropriate if I could reserve, Judge, to hear what counsel has  
12 to say.

13 THE COURT: Thank you very much.

14 MR. PORTER: Thank you, Judge.

15 MR. RASA: Good afternoon, Your Honor.

16 THE COURT: Good afternoon.

17 MR. RASA: Your Honor, I'm a bit outraged. I have a  
18 man, -- first of all, I'm being attacked personally. I  
19 practice before this Court regularly, Your Honor. I never  
20 filed a bad faith petition, I never claimed to file a bad faith  
21 petition, this petition is not a bad faith petition. I have a  
22 gentleman walk in my office last week, there's something wrong  
23 with this picture. He walks in, on paper, despite what Mr.  
24 Porter says, he has equity in that property.

25 THE COURT: Did you do any investigation?

Rasa/Argument

10

1 MR. RASA: I had a contract of sale, Your Honor.

2 THE COURT: Did you talk to his former lawyer, Mr.

3 Rosellini?

4 MR. RASA: No, I did not, Your Honor. And actually  
5 I'm pleased I didn't speak to him because with all the  
6 allegations regarding some conspiracy, I'm glad I didn't speak  
7 with him.

8 THE COURT: Did you know he had filed previous  
9 petitions?

10 MR. RASA: Oh, absolutely, Your Honor.

11 THE COURT: And in the District Court and Circuit  
12 Court.

13 MR. RASA: I read the docket. I read the docket  
14 fully.

15 THE COURT: Okay.

16 MR. RASA: And the docket was --

17 THE COURT: Did you know he had just filed for his  
18 mother a couple of days before that?

19 MR. RASA: Your Honor, absolutely. And --

20 THE COURT: He told you that?

21 MR. RASA: Yes, he did.

22 THE COURT: And did you know --

23 MR. RASA: He didn't file, his mother filed. And I'm  
24 not sure --

25 THE COURT: He filed his mother's petition under a

Rasa/Argument

11

1 power of attorney.

2 MR. RASA: Yes, that was done.

3 THE COURT: So you knew about it.

4 MR. RASA: I knew that, Your Honor.

5 THE COURT: Did you see the order I entered a week  
6 and a half ago on relatively the same petition?

7 MR. RASA: Yes, Your Honor, I absolutely did.

8 THE COURT: Okay. All right.

9 MR. RASA: Okay, knowing all of this, the man comes  
10 in and I'm looking at his documentation here on paper, he's  
11 worth several 100 thousand dollars. I have a contract of sale.  
12 I have an appraised value of property that's 1, -- or at least  
13 for one parcel, it's not 23, it's 24, Your Honor, it's the  
14 commercial property. And he's on food stamps and SSI. That's  
15 what he's receiving. Something is wrong.

16 As I dig deeper, this is the crux of the argument.  
17 Now I understand that he had a prior bankruptcy case and the  
18 bankruptcy case is, the procedural history is at best twisted.  
19 And I don't profess to know what happened in that case. It's  
20 too long. It's too long, it would take me a week to read to  
21 it, just the docket alone was 400 and something entries I  
22 believe.

23 There's an order entered that Mr. Silverman lends  
24 \$650,000 to the debtor back in 2007. And takes a mortgage.  
25 And takes a ground lease in the related companies. Sets up a

Rasa/Argument

12

1 ground lease. Well, they know full well at that point that if  
2 the ground lease isn't paid, the mortgage can't be paid. The  
3 debtor's gotten no money out of the ground lease. So how can  
4 he pay the mortgage? They control both ends of the spectrum.  
5 Now I'm looking at this last week, and saying to myself, am I  
6 missing something. Am I missing something. I'm cognizant that  
7 we have a Sheriff's sale pending. I'm asking why is this being  
8 done now. Why is this being done now. Speak to the buyers.

9 Well, I do speak to the buyers. I do my diligence.  
10 The buyer says, because we're related, I didn't know what was  
11 going on until October, November of 2011. I said, well, --

12 THE COURT: Well, that's six months ago.

13 MR. RASA: Yeah. I said, well, what were you waiting  
14 for. He said he were waiting frankly to see if this worked  
15 itself out. There's claims pending in the Superior Court. We  
16 don't know exactly what those claims are worth. This may be a  
17 short sale for all we know, we don't know. We're waiting for  
18 that to get worked out. When it appeared that it wasn't going  
19 to work out, we got an appraisal.

20 Now I have with me today Mr. Santore, Jr., he is an  
21 attorney.

22 MR. SANTORE: Your Honor, for the record, August  
23 Santore, Jr. Attorney at Law, State of New Jersey.

24 MR. RASA: Mr. Santore is the son of the buyers.  
25 Okay, and it's a husband and wife although the wife is the only

Rasa/Argument

13

1 one on the contract. I brought Mr. Santore today, if there's  
2 any questions regarding the efficacy of the buyer of the  
3 contract, he can speak to that directly.

4 But I've spoken to the buyer, the buyer's husband, at  
5 length. This isn't a sham contract. He has the means to buy,  
6 and in fact I have a financial statement which I can give to  
7 Mr. Porter now, but he's just going to rip it up and it's not  
8 going to mean anything. And then the motion gets filed. It's  
9 filed that same day.

10 I understand that his clients feel that --

11 THE COURT: What would you expect them to do, when  
12 they go to a Sheriff's sale for the X number of times, and they  
13 find another, and I'll use that word another bankruptcy  
14 petition had been filed to stay their sale. What would you  
15 expect him to do?

16 MR. RASA: Your Honor, actually I was going to say,  
17 I'm not entirely unsympathetic to Mr. Silverman and his  
18 position. Although I don't know all the intricacies of this  
19 case, I'm not unsympathetic, I do represent creditors and it's  
20 very frustrating when you have a debtor who has a twisted  
21 procedural history in Bankruptcy Court and Superior Court, who  
22 knows what's going on. We have appeals going on in both places  
23 I understand.

24 THE COURT: And that --

25 MR. RASA: And I don't profess to know everything.

Rasa/Argument

14

1 On the other hand, Your Honor, I have to look at the client as  
2 the client comes in the door and say, what do we have here. Is  
3 this a good faith -- is this a good faith petitioner or is not.

4 THE COURT: Does it factor into your judgment that  
5 when you look at the docket in the State Court or the  
6 Bankruptcy Court and it's voluminous and there's appeals going  
7 on. And you look at the appeals and you see they're all from  
8 your potential new client, doesn't that trigger something?

9 MR. RASA: You know, it does, Your Honor, and I took  
10 the, actually unusual step, I reached out to one of the  
11 attorneys, which was involved in this case, Shoshana Schiff,  
12 and I know Ms. Schiff from law school. We go back many, many  
13 years. And I ran this by her and she said, stay away. I said,  
14 okay. I said, I understand why.

15 But here's what I see. I see an aggrieved debtor. I  
16 see apparently he gets \$650,000 paid on his behalf and that's  
17 it, out of a building that's worth three times that. And the  
18 person who paid him controls both ends of the spectrum.  
19 Controls the income stream to him and also controls the expense  
20 out of him. And I, at that point, saying this doesn't seem  
21 right, something is wrong.

22 And given the little time that I have, obviously, we  
23 have a Sheriff's sale pending, I have to make a decision. And  
24 that's the decision I made. I feel it was a reasonable  
25 decision.

Rasa/Argument

15

1 THE COURT: All right.

2 MR. RASA: Now getting past that, I think that  
3 addresses the sanction issues. I can't speak to Mr. Rosellini,  
4 other than I can tell this Court that I've never spoken to the  
5 man. We went to law school together, I may have spoken to him  
6 back in law school. But we have not spoken. There's no  
7 conspiracy. And I know Ms. Greenberg said that, she said  
8 something in her letter about a conspiratal matter, and there's  
9 nothing like that going on.

10 I made my decision based on my discussions with the  
11 debtor and that's it.

12 THE COURT: All right.

13 MR. RASA: And what I looked at. So getting past  
14 that, I think the touchstone is this, there's a couple of  
15 arguments here that are arguments that have to be worked out.  
16 The first one is the 109E issue, Your Honor. And that's in  
17 fact, that paramount.

18 If this debtor cannot be a debtor in Chapter 13, then  
19 there's only two options here. To dismiss or convert. From  
20 what I see the issue right now, and Mr. Porter can certainly  
21 confirm this, the issue of what's owed is actually -- that's  
22 being litigated in Superior Court at this time.

23 THE COURT: Well, there's a judgment.

24 MR. RASA: There's a judgment, however there's  
25 credits that are due to the debtor.

1 THE COURT: Well, there may be a lawsuit in the  
2 Superior Court about credits and things on the lease. I don't  
3 know. But I do know there's a judgment that's been appealed in  
4 the State Court.

5 MR. RASA: The foreclosure judgment you're speaking  
6 about.

7 THE COURT: The foreclosure judgment.

8 MR. RASA: You're right, Your Honor.

9 THE COURT: Okay.

10 MR. RASA: You're right, Your Honor, and that's out  
11 there. But off of that has to come these credits. And there's  
12 ample evidence that he's owed something off of that judgment,  
13 and that's going to drive it below -- I think the judgment  
14 started out at 1,051,000, and then there's interest  
15 calculations, but off of that we assert there has to come  
16 credits.

17 Now can we know what the amount is today? No I don't  
18 think we can.

19 THE COURT: Well, that's an interesting argument,  
20 because the last attorney was in here two weeks ago telling me  
21 about the judgment, his argument was that I should calculate  
22 the post judgment rate and not the contract rate, to get it  
23 under the threshold. And you know, we debated that and I  
24 pointed out that there's significant case law that would allow  
25 the contract rate to be applied.



Rasa/Argument

17

1 MR. RASA: I agree.

2 THE COURT: And that judgment in particular says, the  
3 contract rate should be applied. So, but I only mention that  
4 because you know, now we've got a little different twist. Now  
5 there's setoffs that are potentially out there. In any event.

6 MR. RASA: I'm aware of the contract rate arguments,  
7 and that's why I didn't raise that issue because I believe that  
8 there probably are arguments that could be made that that is  
9 the rate. Even though I do believe that the rate -- I'm  
10 talking off my head now, it seems to go over 16 percent. And I  
11 don't even know if that's permissible under New Jersey Law.  
12 But that's neither here or not there at this point.

13 I do believe that there are setoffs that should come  
14 off of that. But I guess my point is, I don't think we can  
15 determine that right now. That's a core issue to be determined  
16 by Your Honor. But I don't know that we can -- I'm certainly  
17 not in a position, maybe Mr. Rosellini two weeks ago since he's  
18 been in State Court, Mr. Porter, they can determine that.

19 THE COURT: Well, why don't you just address --

20 MR. RASA: They have enough discovery, but I  
21 certainly don't.

22 THE COURT: Why don't you address the Lilley factors  
23 and tell me why I should not find this petition to have been  
24 filed in bad faith and abuse of the Bankruptcy Code, which was  
25 essentially, what I found two weeks ago, when the mother filed

Rasa/Argument

18

1 again on the eve of foreclosure to effect the same result?

2 MR. RASA: Your Honor, let me --

3 THE COURT: What's different?

4 MR. RASA: Let me see if I can keep it as simple as  
5 possible. And I explained this to the debtor last week. I  
6 explained it to anyone who would listen or read my papers,  
7 very, very simple. Any debtor going into bankruptcy has to  
8 have a way out of bankruptcy. Any attorney that files, or  
9 debtor let's say, forget about the attorney, any debtor who  
10 files a petition with no plan to get out of the bankruptcy case  
11 is filing a bad faith petition. If you don't have a plan, you  
12 can't do it, you ought not to be filing. Plain and simple.

13 In this case, we have a plan. We have a plan to get  
14 out. There is a buyer. The buyer to pay far in excess of what  
15 the, whatever the claim is by the mortgagee.

16 THE COURT: Yes, assuming it were to close.

17 MR. RASA: He has a significant net worth. And I  
18 have it on paper. I'll hand this up.

19 THE COURT: Well, they can go to the sale then and  
20 buy it at the sale.

21 MR. RASA: I don't know that he actually has cash, he  
22 needs to get a mortgage. He advised me --

23 THE COURT: That's the condition I was referring to.  
24 It's a big mortgage.

25 MR. RASA: Understood, Your Honor, understood. But

Rasa/Argument

19

1 that being said, it's not a sham transaction. And I think that  
2 is speaking directly to Your Honor's concern, is it a bad faith  
3 filing. No, not if you can propose a plan, confirm a plan and  
4 pay the plan off, it's not a bad faith filing. And I went  
5 through the Lilley factors in my brief.

6 THE COURT: You did.

7 MR. RASA: And I can --

8 THE COURT: No, that's all right. You did in your  
9 memorandum.

10 MR. RASA: But that's the crux of it, Your Honor.

11 THE COURT: All right.

12 MR. RASA: That's the crux of it.

13 THE COURT: All right.

14 MR. RASA: There's a couple of things that I would  
15 like to address that Mr. Porter raised in his argument. The  
16 automatic stay, vacating the automatic stay is kind of like  
17 stopgap measure which would allow the debtor I guess to remain  
18 in bankruptcy but vacate the automatic stay. If the automatic  
19 stay were vacated, I think what would happen, Your Honor, would  
20 be a mess, an entire mess. The case couldn't proceed, I don't  
21 believe, because there would be no way to, for the debtor  
22 ostensibly to pay off the plan. So I don't think that would  
23 work. It would be far better I think to dismiss the case then  
24 just to vacate the automatic stay. I don't think it would  
25 work, Your Honor. I think we would be fooling ourselves.

1 THE COURT: The only attractive element of vacating  
2 the stay would stop your client from filing another petition.

3 MR. RASA: You're right, Your Honor.

4 THE COURT: But I don't think it's an appropriate --

5 MR. RASA: No, I don't think that would work. Now  
6 there is something that I did pick up that Mr. Porter picked  
7 up, although Mr. Porter used the wrong date. He said there was  
8 a mortgage commitment date of October 20th of 2011, that's  
9 wrong. It is actually October 20th of 2010 in the contract.  
10 It's a typographical error, Your Honor. And it's something I  
11 want to bring up with Mr. Santore and I haven't had the chance  
12 to raise that issue.

13 The buyer indicated that within 30 days he can give a  
14 mortgage commitment. And he would be willing to get hard money  
15 if he needed to. Although I don't think so based on his net  
16 worth, I don't think that would be an issue.

17 And with respect to the appraisal, I looked at the  
18 appraisal. I don't see anything on the face of the appraisal  
19 that indicates that it's a sham appraisal. It's a real  
20 company, and it does actually show an appraised value. So I  
21 don't know what Mr. Porter is talking about frankly. And I  
22 understand that he's emotional about this case, I can hear it  
23 in his voice. The two times I've spoken to him or heard from  
24 him on the telephone he was emotional. And that's okay, I  
25 guess he's been living with this case for a long time, it's

1 okay to be emotional. Zealous advocacy is sometimes a good  
2 thing.

3 But I don't see anything wrong with the appraisal.  
4 It looks to me to be a preliminary appraisal from a company  
5 that, a guy who has an MAI certification, so I don't see  
6 anything wrong with that, Your Honor.

7 And I think I addressed most of the issues that I  
8 wanted to address that were raised by Mr. Porter. As I said,  
9 in summing up, Your Honor, it was a good faith filing. He has  
10 a means to propose a plan, to confirm the plan, and to pay the  
11 plan off.

12 I agree that the 109 issue has to be addressed. It  
13 has to be addressed by this Court. And it should be addressed  
14 in one of two ways. Either, Your Honor's going to have to take  
15 testimony. I think it's going to require a plenary hearing.  
16 But the case shouldn't be dismissed. The appropriate avenue to  
17 go if the claim is too high is to be converted to a Chapter 11  
18 case and we get it done that way.

19 And I considered that last week. However, the  
20 administrative costs, full well knowing I know that I, you  
21 know I just filed a Chapter 11 plan today, the administrative  
22 costs involved with it, that type of case, if it can be done as  
23 a Chapter 13, it would be far preferable. If necessary we can  
24 do an 11 and let the chips fall where they may.

25 THE COURT: All right.

1 MR. RASA: Your Honor, I don't believe I have  
2 anything further. I think I addressed everything that I needed  
3 to address.

4 With regards to the sale, let me mention one other  
5 thing. Your Honor, I put it in as a cross motion, although I  
6 spoke to your courtroom deputy and I'm not sure I did it the  
7 right way, on Pacer or ECF. However, I don't know that the  
8 sale motion is appropriate to be brought on a summary fashion  
9 like this. I think it needs to have notice. You need to, if  
10 anything, stir interested parties to come forward and I  
11 represent the debtor and I want to see the debtor succeed, and  
12 I want to see him get as much money as possible. And if there  
13 are interested parties, they have to know about it.

14 I don't know that it's so appropriate that Your Honor  
15 rule on that today, but I wanted to get it in so I put  
16 everything forward and if we need to hear that at a later time,  
17 then so be it.

18 THE COURT: All right.

19 MR. RASA: Thank you, Your Honor.

20 THE COURT: Thank you. Ms. Greenberg, do you want to  
21 be heard?

22 MS. GREENBERG: Briefly, Your Honor. I do concur with  
23 Mr. Porter. The one thing I agree with Mr. Rasa about is that  
24 we can't handle the sale motion today, and that would be wholly  
25 inappropriate. Our debtors come to us with their histories and

1 with their backgrounds, and very few have histories as this has  
2 had.

3 Mr. Mondelli and his family has been through the  
4 system in the State Court system and the appellate system. And  
5 once again we're here with the debtor wanting this Court to  
6 really step into the shoes of what's going on in State Court  
7 and with the appeals. Or to reconsider last week's argument  
8 and ruling.

9 You know, there was the credit counseling that was  
10 done February 29th, we can't ignore that. Mr. Rasa advised the  
11 Court that he talked to people, he did his research, and  
12 everything, however, we have nothing more than a skeletal  
13 petition and we don't have a plan. We could talk about a plan,  
14 but there is no plan. There's no plan filed. There are no real  
15 schedules filed. There's nothing for us to look at.

16 With a debtor with that history and with counsel with  
17 that knowledge, they need to know that they're coming in here  
18 and they're going to fight an uphill battle. And they should  
19 be prepared and should have been on the offense instead of on  
20 the defense. Maybe they weren't aware that they were going to  
21 be faced with this motion. I don't know.

22 But I think to come in here now and to say, it's not  
23 bad faith, we need another -- we've heard this, we've been  
24 there, we've done it. And I don't think this case is  
25 appropriately filed as a 13. And I don't think the case should

1 be continued.

2 THE COURT: Okay, thank you.

3 MR. RASA: Your Honor, if I may quickly address.

4 THE COURT: Sure.

5 MR. RASA: The concerns raised by the Trustee. The  
6 schedules, I actually have schedules, I haven't filed them. I  
7 do have them. In fact they were largely prepared last week.  
8 As Your Honor knows, I wrote to the Court, I had been very busy  
9 and I wanted to review these, especially for that reason,  
10 especially for that reason. Because it appeared that we were  
11 going to have substantial opposition.

12 But the schedules are done as is the plan, and I'm  
13 ready to file them, and it will be filed. I do apologize that  
14 it's not, and the Trustee's argument is noted.

15 THE COURT: Okay.

16 MR. PORTER: Just briefly, Your Honor. Mr. Rasa, if  
17 he'd done his homework, would have realized that the so called  
18 inequities that he's referred to were subject to Court approval  
19 by Your Honor on May 16th 2007 when the transaction was  
20 approved. And then the fall of 2007 when there was an  
21 application to enforce the ground lease and approve the ground  
22 lease. And then that was appealed to Judge Martini and it was  
23 affirmed there in April 2008. And then later it went to the  
24 Court of Appeals.

25 So this transaction is sacrosanct, Judge. It is a



1 bona fides transaction. And it's far too late for anybody to  
2 come forward and say, let's look back to figure out what  
3 happened. That boat sailed.

4 In terms of the shamness of this transaction, Judge,  
5 if you look at page 4 of the contract, additional provisions,  
6 it says, "29B: purchase of this property is subject to  
7 satisfactory income based appraisal based upon the existing  
8 ground lease as the market value without the ground lease most  
9 likely exceeds the value of the property with the ground lease  
10 limitations. If the ground lease is terminated during pendency  
11 of litigation or by court order of the Bankruptcy Court, then  
12 all appraisal contingencies will be removed", Judge.

13 There's a ground lease here, Judge. This is a sham  
14 transaction because the ground lease is not going away. It's  
15 been approved. Res judicata, collateral estoppel, prevent this  
16 matter from being, this contract from being even considered,  
17 Judge. So I think it's important for Your Honor to recognize  
18 that.

19 In terms of the disingenuous of this application  
20 being filed, on October 26th a gentleman by the name of August  
21 Santore contacted one of my client's former partners, and told  
22 them that he was interested in buying the property. But what  
23 happened though, Judge, is that he goes on to say that he will  
24 do anything he can, no matter what the cost, so stop VRP, my  
25 clients, from getting the property at foreclosure.

1           The dye was caste, Judge. They knew about this  
2 transaction. And I think as Your Honor has correctly pointed  
3 out, that there really is no prejudice. If these parties want  
4 to come forward and buy the property at the Sheriff's sale,  
5 they could do that. And there would be nothing more than would  
6 please my clients to move on.

7           In addition, Your Honor, even if we go forward with  
8 the foreclosure sale, which I urge Your Honor to permit, is  
9 that Mr. Mondelli has another ten days after that to redeem his  
10 right of redemption. So this man of supposed substantial net  
11 worth can put together a deal, not just today, he's got  
12 essentially 15 days to do it. He's had since at least October,  
13 we know that.

14           So Judge, I submit to you that the application is a  
15 sham. It was filed in bad faith for no purpose other than to  
16 stop the transaction. And I think as Your Honor has correctly  
17 pointed out, the mortgage itself sets forth 17 percent which  
18 brings it up to \$1,180,000 which is clearly \$100,000 over the  
19 threshold. If there are any setoffs due, they are to be  
20 adjusted at the foreclosure sale, Judge. That's where it  
21 happens, not before Your Honor, Judge.

22           Finally, Judge, and I think this is a very important  
23 point, Judge, is that you have no proof from these buyers that  
24 they are going to go forward with this deal. Zero. You have a  
25 fake contract that has typographical errors we're told now. I

Decision

27

1 don't think they are. And what we have, Judge, is people who  
2 are not serious, they are only interested in delaying this to,  
3 for no other purpose than for delay. And perhaps to push my  
4 clients so that they just lose interest and abandoned their  
5 interests, and that's just not going to happen, Judge. Thank  
6 you for your time.

7 THE COURT: You're welcome. All right.

8 MR. SANTORE: Your Honor, since I'm being somewhat  
9 attacked, may I have a moment to just address the scope of the  
10 contract?

11 MR. PORTER: Judge, I would object.

12 THE COURT: No.

13 MR. SANTORE: Okay.

14 THE COURT: Before the Court is a motion to dismiss  
15 the debtor's Chapter 13 petition, or in the alternative for  
16 relief from the automatic stay. I'm going to spend some time  
17 for the record going through the facts of the case, because I  
18 think they're significant and material. And this is just not  
19 the ordinary case.

20 On February 18, 2004, that's '04, Victor Mondelli  
21 filed a voluntary petition for Chapter 13 in this court. On  
22 April 27th '07 and May 2, '07, the Court entered orders  
23 authorizing Mondelli, after a lot of discussion and  
24 negotiations in this court, to obtain financing from Jack  
25 Silverman Reality and Mortgage Co., who I'll call the creditor,

1 for its commercial property, for his commercial property at  
2 issue in this case, consisting of two adjacent lots, known as  
3 Lot 23 and Lot 24 in Berkeley Heights. Lot 23 is jointly owned  
4 by Mr. Mondelli and his mother, Anna Mondelli.

5 On May 15th '07; May 16, '07 and June 27, '07, the  
6 Court entered consent orders permitting Mr. Mondelli and his  
7 mother to enter into a transaction with the creditor involving  
8 a loan to Mr. Mondelli, secured by mortgages on the property  
9 and a 99 year ground lease by Mr. Mondelli and his mother to  
10 the creditor Berkeley, so that Berkeley could develop the  
11 property. It's alleged that almost immediately that the loan  
12 proceeds were paid into the bankruptcy estate, and Mr.  
13 Mondelli's creditors were paid off, Mr. Mondelli embarked on a  
14 campaign to avoid the transaction and prevent the creditor from  
15 redeveloping the property, including filing numerous motions  
16 with this Court seeking reconsideration of the orders  
17 authorizing the transaction, and enforcing the Court's own  
18 orders. And when those motions were denied, Mr. Mondelli  
19 appealed the orders to the District Court. He was denied  
20 there. And then he appealed to the Court of Appeal, Third  
21 Circuit Court of Appeals, and eventually to the United States  
22 Supreme Court. All of Mr. Mondelli's appeals were  
23 unsuccessful.

24 Mr. Mondelli and his mother eventually defaulted on  
25 the mortgages and judgments of foreclosure in the State Court

1 were entered on September 6th 2011. Copies of those judgments  
2 are provided by the creditor, attached to the moving papers.  
3 Writs of attachment were issued on November 29th 2011. And a  
4 Sheriff's sale for the two lots was scheduled for February 1,  
5 2012. Mr. Mondelli adjourned the sale to February 29th 2012.

6 On February 28th 2012 Anna Mondelli, through a power  
7 of attorney, executed that day as I recall to Mr. Mondelli,  
8 filed a petition for Chapter 13 protection in this court. And  
9 as a result, the Sheriff's sale was stayed. Mr. Mondelli, he  
10 attempted to stay the Sheriff's sale by motion first, in  
11 January. That was denied. Then they came to this court.

12 On March 7th, after Anna Mondelli's petition was  
13 filed and the stay was effected, we had a hearing in this court  
14 on the creditor's motion, very similar to the motion that's  
15 before me today, seeking to dismiss Anna Mondelli's petition,  
16 one for lack of statutory jurisdiction because the amount of  
17 the secured debt exceeded the statutory maximum under 11 USC  
18 Section 109. And also because the creditor felt the filing was  
19 made in bad faith solely to delay the Sheriff's sale without  
20 any realistic prospect of reorganization.

21 The Court ruled in favor of the creditor that day.  
22 And entered an order on March 7, 2012 dismissing the case  
23 because I felt it was a bad faith filing. And also a question  
24 -- and felt that we didn't have jurisdiction in Chapter 13  
25 because the threshold had been exceeded.

1           After the stay was lifted by this Court's order  
2     dismissing Anna Mondelli's bad faith bankruptcy petition on  
3     March 7th, the Sheriff again rescheduled the sale for March  
4     14th 2012. Mr. Mondelli apparently waited until the morning of  
5     March 14th and filed his petition for Chapter 13, which is  
6     before the Court at this point.

7           Significantly, or in addition, also filed, although  
8     filed on the morning of the Sheriff's sale, the certificate of  
9     credit counseling attached to the petition shows that Mr.  
10    Mondelli received credit counseling as far back as February  
11    29th, the morning of the previously scheduled sale, and the day  
12    after his mother filed her bad faith petition. Creditor makes  
13    that point to argue that Mr. Mondelli was preparing this new  
14    petition as long ago as two weeks.

15           Mr. Mondelli owes at least \$1,183,000 pursuant to  
16    judgments of foreclosure entered by Judge Malone in the  
17    Superior Court in New Jersey on September 6, 2011. This  
18    consists of a judgment in the amount of \$1,051,682 plus tax  
19    costs and attorney's fees. The accrued post judgment interest  
20    rate authorized by Judge Malone allows for interest calculated  
21    through March 14th of \$92,638. Therefore the total debt due as  
22    March 14th was at \$1,183,062 which exceeds the statutory limit  
23    for a secured debt of \$1,081,000 in Chapter 13 cases by more  
24    than 100,000. See 11 USC Section 109. It's no different than  
25    it was a couple of weeks ago when I made the same finding that

1 it exceeded the secured party limitation.

2 The creditor also argues that Mr. Mondelli's Chapter  
3 13 filing made in '04 was converted to a Chapter 7 case and  
4 closed in March of 2010 after a discharge was entered. But  
5 that his case was reopened in July of 2010 because of filing of  
6 appeal concerning numerous orders of the Bankruptcy Court. And  
7 they argue further that that case is still open and that this  
8 case is then ineffective.

9 The debtor argues however that the previous case,  
10 even though on appeal, it has been closed. The docket would  
11 seem to indicate it is closed. In any event, the creditor  
12 seeks dismissal of Mr. Mondelli's bankruptcy case as a bad  
13 faith filing, made solely to delay the Sheriff's sale, is  
14 without statutory jurisdiction, and should be dismissed. They  
15 ask for sanctions and penalties against Mr. Mondelli, his  
16 attorney, and also his prior attorney.

17 The Chapter 13 Trustee files a letter essentially  
18 arguing what she's mentioned in court. But she writes to us  
19 and says that a skeletal petition was filed on behalf of Mr.  
20 Mondelli on March 14th, a mere week after the dismissal of his  
21 mother's Chapter 13 filing, who's the co-owner reality. The  
22 certificate of credit counseling from Mr. Mondelli was prepared  
23 on February 29th 2012, the day after the filing of Anna  
24 Mondelli.

25 Chapter 13 Trustee, utilizing her experience in

1 dealing with these cases on a daily basis, says that this  
2 raises, at the very least, the suspicion that Mr. Mondelli and  
3 his mother orchestrated the pre-planned bankruptcy filing so as  
4 to further frustrate the main creditor in a conspiratorial  
5 manner.

6 She points out that the cover page of the instant  
7 petition indicates the exceeded liabilities exceed the  
8 statutory amount. And she joins the secured creditor's request  
9 to dismiss the case with a bar, 180 day bar against refiling by  
10 Mr. Mondelli, any successors in interest, with prospective  
11 relief to be applied. And further requests counsel fees be  
12 awarded in the amount of \$1,000 for her time spent on the  
13 review of the case and this motion, in drafting the reply, and  
14 her appearance here today in court. I kind of get the feeling,  
15 I think Ms. Greenberg said when she was on her feet, enough is  
16 enough.

17 Mr. Mondelli's counsel submitted a detailed  
18 opposition. I would note, or would note it's an attorney's  
19 opposition, it's a statement. There is to my knowledge, no  
20 certification filed by Mr. Mondelli.

21 MR. RASA: No, Your Honor, there was a certification.

22 THE COURT: By Mr. Mondelli?

23 MR. RASA: Yes, there was, Your Honor.

24 THE COURT: Okay, I didn't see that, I read your  
25 opposition. The opposition essentially says that the filing



1 was -- and for the first time at least, the debtor acknowledges  
2 that the filing was precipitated by a pending foreclosure sale  
3 which the debtor sought to stop. The debtor, it's alleged, had  
4 entered into a contract of sale. The buyer is the debtor's  
5 cousin. It's argued the price is based on a recent appraisal.

6 The debtor's relationship with the creditor and the  
7 prior bankruptcies should not be considered by the Court I'm  
8 told. The debtor now has a bona fides buyer and a reasonable  
9 sale contract that can be proposed, confirmed and completed.  
10 It's argued that the assets are minimal with the exception of  
11 the real property. And that he further points out or argues  
12 that the Chapter 7 case was closed so the debtor's entitled to  
13 file the case. And argues further that sanctions are not  
14 warranted as the case was filed in good faith, which they  
15 repeatedly suggest.

16 They seek by way of cross motion the authority to  
17 sell the property, I think it's certainly acknowledged even by  
18 debtor's counsel and all that you know, we can't move a cross  
19 motion on such limited notice. But I'll accept the whole  
20 contract, appraisal, cross motion information as a, two things,  
21 one as a defense to the motion to dismiss. And two as a motion  
22 that the debtor through counsel is prepared to file  
23 expeditiously to seek Court approval if the case isn't  
24 dismissed. So that evidence, if you will, I'll accept before  
25 the Court on this motion. It won't be discounted.

1           The law as I mentioned last time on this motion, or  
2           this type motion, is relatively clear. Lack of good faith in  
3           filing a petition is sufficient for dismissal for cause under  
4           Chapter 13. See In Re: Goddard 212 BR 233, 237 (District New  
5           Jersey, 1997), which cites and refers to the leading case of  
6           the Third Circuit, In Re: Lilley 91 F. 3rd 491 (Third Circuit,  
7           1996).

8           Moreover, a petition filed for no other purpose than  
9           to delay a Sheriff's sale is a bad faith filing. See In Re:  
10          Antonelli, that's Judge Wizmer's recent case of January 30,  
11          2012. It's at Westlaw 280772.

12          Factors to be considered under Lilley are the nature  
13          of the debt, the timing of the petition, how the debt arose,  
14          the debtor's motive in filing the petition, how the debtor's  
15          actions effect creditors, the debtor's treatment of creditors  
16          both before and after the petition was filed, and whether the  
17          debtor has been forthcoming with the Bankruptcy Court and the  
18          creditors. See In Re: Lilley 91 F. 3rd 491 at 496.

19          Of course the creditor and Mr. Mondelli's counsel  
20          take opposite views on how the factors play out under Lilley.  
21          But the Court in analyzing those factors and analyzing what's  
22          gone on in this case, and you can't be blind to the history of  
23          Mr. Mondelli in this Court. I shouldn't be and I can't.

24          He filed originally in 2004 in this Court, and I've  
25          said this before on the record in Mr. Mondelli's cases,

1 sometimes no good deed goes unpunished. The Chapter 13  
2 Trustee, the Court and others sought to assist Mr. Mondelli.  
3 The case was converted, I re-converted, tried to help him make  
4 a deal. And then nothing occurred after that except to unwind  
5 the deal that he wanted to make. Including appeal after  
6 appeal, all of which were denied. Apparently that's going on  
7 in the State Court the same way.

8 If one views the Lilley factors, the timing of the  
9 petition is a factor with bad faith filing. Well, it couldn't  
10 be no more obvious purpose for the filing. And it's not the  
11 first time. He did a couple of weeks ago through his mother.  
12 It couldn't be more obvious.

13 The debtor's motive in filing the petition. That's  
14 to stay the sale. Again. How the debtor's actions affected  
15 the creditors, it's delayed this creditor an extraordinary  
16 amount of time. The debtor's treatment of creditors both  
17 before and after the petition was filed. Well, this creditor  
18 has been treated both and after the petition and we can talk  
19 about the variety of petitions, in a way I think that's unfair  
20 and in just, you know, it gives the Bankruptcy Court and the  
21 Bankruptcy Code a bad name if we allow debtors to utilize it to  
22 effect rights that are guaranteed by law.

23 I denied many, many, probably most motions to dismiss  
24 filed right after the petitions have been filed because of bad  
25 faith. I certainly denied legends more than I've granted.

1 Because we're here under operating under a Bankruptcy Code and  
2 the fundamental principle of Bankruptcy Code is rehabilitation,  
3 fresh start, and assistance to a debtor. But when it crosses a  
4 line to where the debtor is improperly utilizing the Code for  
5 his own personal advantage, it's abusive of the Code. It's  
6 just unfair and it's what bad faith filings are all about.

7 I have no difficulty in all candor, finding this case  
8 to be a bad faith filing. I'm going to dismiss the case with  
9 prejudice because of Mr. Mondelli's bad faith filing designed  
10 simply to affect this creditor's rights in the State Court.

11 I'll address the, that's one, two, the case is also  
12 dismissed with prejudice because of the creditor's own debt  
13 structure. It's just in excess of the Section 109 limitations  
14 for Chapter 13. Now counsel's correct, you could convert it to  
15 an 11. All right, this is not an 11. I suppose I could be a  
16 wiseguy and I just leave the case here, and grant the relief  
17 from the stay. Then Mr. Mondelli wouldn't be back filing a new  
18 case, I wouldn't have to deal with this later.

19 But I don't think that's appropriate either. Because  
20 there's nothing left to administer of the case. So I'm not  
21 going to do that. I'm going to dismiss with prejudice for a  
22 bad faith filing and impose a 180 day bar against Mr. Mondelli  
23 filing another bankruptcy petition.

24 Now let me address the contract and the appraisal,  
25 which is the first time it's coming before the Court. It's

1 clear that the prospective buyer knew of this, at least six  
2 months ago when they approached the creditors. When do they  
3 come forth? Now, after the second Chapter 13 is filed, and  
4 there's contingencies. There's a big contingency in that  
5 contract. Assuming everything else washed out, there's a \$1  
6 million mortgage contingency. That's a big contingency.

7 And as counsel points out, the appraisal is  
8 conditioned upon there not being a lease, correct? And there  
9 is a lease. So I've taken that into consideration. And I just  
10 think, if I really thought there was somebody next week or two  
11 weeks from now that could take this case out and pay off the  
12 creditor and save Mr. Mondelli, I'd think differently. But I  
13 just think it's another -- there is no evidence before me of  
14 that. The only evidence before me is the bad faith filing with  
15 some bootstrap contract with contingencies that are going to  
16 take months. And if the buyer really wants to participate, they  
17 can go to the sale, or they have 10 days to help Mr. Mondelli  
18 on his right of redemption. So there's remedies stills  
19 available.

20 But for those reasons, I'm going to dismiss the  
21 petition with prejudice. I'm going to impose 180 day bar. And  
22 I'm going to assess attorney's fees, I'm going to assess a  
23 sanction against Mr. Mondelli, not counsel today, but Mr.  
24 Mondelli \$5,000 payable to the creditors. \$2500 of which would  
25 be for attorney's fees for their attorney to have to come do

1 all of this, his bill is probably in excess of that. The  
2 balance basically for the interest that these folks have lost  
3 for the seven or eight days. That's \$5,000. And another  
4 \$1,000 which is what Ms. Greenberg's requested.

5 Again, Mr. Mondelli is to satisfy those obligations.  
6 I'm not going to sanction or at this point award fees against  
7 counsel today. I'm satisfied Mr. Rasa has indicated the  
8 circumstances under which he was involved. His due diligence.  
9 And I'm satisfied that he shouldn't be so sanctioned. I don't  
10 know what's in front of me that I can sanction Mr. Rosellini,  
11 in all due candor, despite the suspicion of creditor's counsel  
12 that Mr. Rosellini is involved. So we're not going to sanction  
13 him either today.

14 That's the order of the Court. Will you prepare an  
15 order?

16 MR. PORTER: Thank you. Yes, Your Honor, we will.

17 THE COURT: Make sure Mr. Rasa sees it. Send it to  
18 me, I'll sign it right away.

19 MR. PORTER: Thank you, very much, Your Honor.

20 MR. RASA: Your Honor, I have to ask this, would you  
21 stay your order pending perhaps if he wants to appeal this?  
22 I wouldn't handle an appeal, I don't generally do that type of  
23 work.

24 THE COURT: No, but I appreciate you make an  
25 application for a stay pending an appeal, it's denied.

Decision

39

1 MR. RASA: Okay, thank you.

2 THE COURT: Denied. You're free to go to the  
3 District Court if he's like. Thank you.

4 MR. RASA: Understood, Your Honor.

5 MR. PORTER: Thank you, Your Honor.

6 MR. RASA: Thank you, Your Honor.

7 THE COURT: Thank you everybody.

8 \* \* \*

9 C E R T I F I C A T I O N

10 I, **PATRICIA POOLE**, court approved transcriber,  
11 certify that the foregoing is a correct transcript from the  
12 official electronic sound recording of the proceedings in the  
13 above-entitled matter.

14

15 \_\_\_\_\_

16 /S/ PATRICIA POOLE

17 TERRY GRIBBEN'S TRANSCRIPTION SERVICE DATE: \_\_\_\_\_

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